IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 956 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MUSTAKBHAI ALIAS KALIYO

Versus

STATE OF GUJARAT

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Appearance:

MS RV ACHARYA for Petitioner

MR KT DAVE APP for Respondent Nos. 1 to 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/03/2000

ORAL JUDGEMENT

#. Deputy Commissioner of Police, Traffic Branch, Ahmedabad City, Ahmedabad passed an order on August 25, 1999 in exercise of powers under section 56 (b) of the Bombay Police Act ("the Act" for short), externing the present petitioner from the territories of Ahmedabad

Police Commissionerate and Ahmedabad (Rural) district and also districts of Gandhinagar, Kheda and Mehsana for a period of two years on the ground that the petitioner knocks down money from traders with the help of his associates in Shah-e-Alam area, does not pay for goods bought from traders in Shah-e-Alam area and intimidates the traders who demand money for the goods sold. He has been continuing his activities since August, 1997 and in order to preent him from continuing his activities, he is required to be externed.

#. Prior to passing of the order, the petitioner was served with notice under section 59 of the Act for showing cause as to why he should not be externed and after the conclusion of the proceedings, the externment order was passed. The externment order was carried in appeal before the appellate authority as contemplated under section 60 of the Act and the appeal came to be dismissed on October 22, 1999.

#. The petitioner/externee challenges the externment order as well as the order of appellate authority under the Act on various grounds. However, Ms. Acharya, appearing for the petitioner has restricted her arguments to the aspect of delay in passing the order and non-application of mind. She submitted that both in the show cause notice as well as the detention order, only two offences registered against the petitioner are considered. They relate to Maninagar Police Station CR No. 442/91 and Danilimda Police Station CR No. 53/97. Thereafter, there is nothing to indicate any involvement of the petitioner in any crime and therefore, the causal connection was non-existent when the order was passed in August, 1999. She submitted further that the externing authority has observed in the order that the externee is involved in the criminal activities from August, 1997 whereas there is no material to indicate that the petitioner is involved in such activities from August, 1997 onwards till the order is passed in August, 1999 and this observation therefore, reflects that the order is passed mechanically without application of mind. Ms. Acharya, therefore, submitted that the petition may be allowed and the order may be quashed and set aside.

#. Shri K.T.Dave, learned APP has opposed this petition. He has tried to emphasize the fact that the petitioner is engaged in nefarious activities and therefore, he was required to be externed. That the authority is not expected to assign reasons for passing the order and therefore, the appeal also having been dismissed, this Court may not entertain this petition and the same may be

dismissed.

#. Having regard to rival side contentions, undisputedly, there is nothing on record to indicate the involvement of the petitioner in any criminal activities after the offence registered against him in 1997. Against this, the externing authority has observed that the petitioner is engaged in criminal activities since August, 1997. This reflects non-application of mind on the part of the externing authority when the authority makes observation in the absence of any material. Further, the externing authority has overlooked the aspect that the causal connection no more survived when the order was passed. The affidavit filed by the externing authority also does not indicate anything about the continued activities of the petitioner since August, 1997 till the passing of the order and in the absence of any explanation from the externing authority, the order has to be quashed. In this regard, a decision in the case of Chothmal Sagansingh Rajput v. State of Gujarat & ors., 1989 (1) GLR 63 can also be taken into consideration. In fact, the order can be said to have been passed on stale incidents and on basis of irrelevant, extraneous and non-existent facts. The petition deserves to be allowed for the reasons stated above.

#. The petition is therefore allowed. The impugned order of externment passed by respondent no.2 on 25.8.1999 externing the petitioner is hereby quashed and set aside. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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pirzada/-